IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

RCRev..No. 82 of 2007()

RCA.152/2003 of ADDL.DISTRICT COURT (ADHOC)-II, THALASSERY
RCP.45/2001 of RENT CONTROL (MUNSIFF) COURT, PAYYANNUR
(IA. 301 /2003)
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REVISION PETITIONER/APPELLANT/PETITIONER/DEFNDANT

MADAKKAN KURUPPILLATH UMMER,
S/O.V.K.MOOSSA HAJI, AGED NOT KNOWN,
RESIDING AT UDUMBUMTHALA THEKKE TRIKARIPUR.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: RESPONDENTS/RESPONDENTS/PLAINTIFFS
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1. KRISHNA JANAKI,
AGED 65 YEARS, W/O.DECEASED KAPPANA MURALIDHARAN.

2. CHILDREN:
JAMUNA SATHYA PRADEEP,
AGED 33 YEARS.

3. JAGATHA RAJENDRAN,
AGED 27 YEARS.

4. JALAJA.M.,
AGED 27 YEARS.
(1ST PETITIONER IS MUKTHIAR HOLDER OF THE
PETITIONERS 2 TO 4).

(ALL ARE R/A.KASBA AMSOM DESOM, NO OCCUPATION,
RAM MOHAN ROAD, SL, SHINDEVALAPPU,FLAT-7,KOZHIKODE

BY ADV. SRI.T.K.VIPINDAS(CAVEATOR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON 22/03/2007 PASSED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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R.C.R.No.82 of 2007
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Dated this the 22nd day of March, 2007.

ORDER

Antony Dominic,J.

The tenant in R.C.P.No.45 of 2001 of the Rent Control Court, Payyannur is the revision petitioner. The petition seeking his eviction was posted in the ready list for trial on 7.1.2003 and in the absence of the tenant in person or even an application made seeking an adjournment of the case, the Rent Control Court set him ex parte and ordered his eviction. Subsequently, the tenant filed I.A.No.301 of 2003 invoking Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte order of eviction. It was stated that he was suffering from typhoid from 5.1.2003 and that it was on account of hospitalisation that he could not be present in court on 7.1.2003. He had produced a medical certificate issued from the hospital where he was stated to have been admitted, in support of his claim of illness and consequent hospitalisation.

2. The application was strongly objected by the landlord. It is seen that the tenant was examined as PW1 and the medical certificate was also marked as Ext.A1. The Rent Control Court, after hearing the matter, by its order dated 31st July, 2003, dismissed I.A.No.301 of

2003 The order of the Rent Control Court was affirmed by the Rent Control Appellate Authority, Thalassery by its order in R.C.A.No.152 of 2003. It is seeking to have these orders reversed that the tenant has filed this revision.

3. Counsel for the tenant submitted that it was on account of his ailment that he could not be present in court on the occasion when the case was listed for trial. He also points out that as his plea of illness was supported by a valid medical certificate issued from the hospital, the Rent Control Court ought to have set aside the ex parte order and given the tenant a chance to contest the petition on merits. It was argued that there was no deliberate lapse on the part of the tenant, to be visited with an ex parte order of eviction. According to him, the Appellate Authority also erred in confirming the order of the Rent Control Court. On the other hand, counsel for the landlord would argue that the intention of the tenant was only to protract the proceedings and that he deliberately kept away from the court on the date on which the case was posted for trial. It is pointed out that the medical certificate could not be acted upon and the conclusion of the Rent Control Court as affirmed by the Appellate Authority are not to be upset in revisional jurisdiction.

4. We have considered the rival submissions made by the

counsel for both parties. Normally, in a case where a party to a proceedings before the court pleads that it was on account of his ailment that he was prevented from attending the court, leniency is shown and an adjudication on merits is not denied. But however, such leniency that cannot be taken as a licence by unscrupulous litigants, who would deliberately keep away from court and later plead to ailment so as to justify their default. This case appears to be one falling in that category of cases.

5. It is noticed that when the tenant contended that it was his illness and consequent hospitalisation that led to his absence from attending the court when the case was listed for trial, the landlord resisted the plea asserting that on the day on which the case was posted, the tenant was present in the court verandha till the case was called and he absented himself with ill-motives. The Rent Control Court has also taken note of the fact that on the date of evidence, counsel for the tenant paid the admitted arrears of rent to the landlord although the very same counsel has reported that he had no instructions from the client. It was in view of the nature of the contention then raised by both parties, a closer scrutiny of the medical certificate and the bonafides of the case set up by the tenant was necessitated. The Rent Control Court has found that Ext.A1 medical

certificate, despite the objection, was allowed only to be marked subject to proof and that the Doctor, who had issued the medical certificate was not examined. Non-examination of the Doctor in the 4light of what has come out in evidence, cannot be taken as an innocent lapse, but as we noticed, if the Doctor had entered into the box he would have had a lot to explain. Ext.A1 certificate, which was issued on 28.1.2003, though stated the period of hospitalisation from 5.1.2003 to 15.1.2003, the affidavit filed by the tenant did not contain the period of hospitalisation. The certificate also did not mention the I.P. Number or any reference number of the patient. The Rent Control Court has also mentioned that it was for the first time that it was coming across a medical certificate which prescribes 12 days of bed rest, which was also unusual, as normally, the bed rest prescribed will be for one week, two weeks, 10 days like that.

6. In our view, the court below for valid reasons came to the conclusion that the certificate is suspicious in all respects and was one obtained to suit the convenience of the tenant, who filed the application to set aside the ex parte order. We cannot find fault with the Rent Control Court, that in the nature of the contentions before it, the certificate was not one inspiring this confidence. The Rent Control Appellate Authority also has examined the whole case and has

endorsed the reasons given by the Rent Control Court as to why the genuineness of the certificate was suspicious.

7. We do not find anything wrong in the findings of the Rent Control Court as affirmed by the Rent Control Appellate Authority. Counsel for the petitioner has produced copy of the discharge certificate dated 15.1.2003 before us. If the discharge certificate was available with the tenant, we fail to understand why the same was not produced before the Rent Control Court or the Rent Control Appellate Authority when the matter was heard. Although the genuineness of the discharge card is disputed by the counsel for the landlord, we feel that this also does not in any manner improve the case of the tenant.

We find no reason to interfere with the findings of the Rent Control Court as affirmed by the Rent Control Appellate Authority and as the revision lacks in merit, we dismiss the same.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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